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9 UNITED STATES DISTRICT COURT
10
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 JOSE ALFARO et. al.,)

17 Defendants.)

CR. No. 09-00466-DSF-22

**DEFENDANT ALEX
SANCHEZ'S NOTICE OF
MOTION AND MOTION TO
COMPEL IMMEDIATE
DISCLOSURE OF
FAVORABLE EVIDENCE;
DECLARATION OF
COUNSEL; EXHIBITS**

DATE: January 16, 2013

TIME: 2:30 p.m.

COURT: Hon. Dale S. Fischer

18 TO THIS HONORABLE COURT; ASSISTANT UNITED STATES
19 ATTORNEYS GARTH HIRE, XOCHITL ARTEAGA AND ROBYN BACON ,
20 DOJ TRIAL ATTORNEY KEVIN ROSENBERG AND ALL DEFENSE
21 ATTORNEYS:

22 PLEASE TAKE NOTICE THAT on January 16, 2013 at 2:30 pm in the
23 courtroom of the Hon. Dale S. Fischer, Defendant, Alex Sanchez, by and through
24 his counsel, Amy E. Jacks, will move this Court under U.S. Const. Amends V. and
25 VI. and *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, for an Order
26 compelling the immediate disclosure of all favorable evidence, including, but not
27 limited to, the reports, documents, notes and testimony listed below.

28 The motion will be based on this notice, the attached Memorandum of Points
and Authorities, the Declaration of Counsel ("Jacks Decl.") filed concurrently

1 herewith, the exhibits attached hereto, the records and filed in this case and such
2 oral or documentary evidence as may be presented at the hearing on this motion.

3 The materials for which Mr. Sanchez seeks immediate disclosure include the
4 following:

5 1. Regarding witnesses FBI Agent Jonathan Bauman and LAPD Det. Frank
6 Flores:

7 a. Whether the witness has changed any opinion(s) expressed in
8 declarations, affidavits or sworn testimony in court or before the grand jury, the
9 substance of any “new” opinions, when the “new” opinions were formed, the
10 reason(s) for the change of opinions and/or the forming of “new” opinions,
11 disclosure of the identities of any and all government actors or agents to whom the
12 change(s) of opinion(s) was/were expressed, the dates of any such expression,
13 whether it was verbal or written and any notes, reports or writings of any
14 government actor or agent reflecting, in any manner, the substance of the
15 communication.

16 b. Whether, in the course of any case, the witness made false
17 statements in court filings or sworn testimony.

18 c. Identification of any and all false statements made by the witness
19 in court filings or sworn testimony.

20 d. Whether the witness made false statements, written or oral, or
21 attested to false information in connection with any of his duties as a law
22 enforcement officer.

23 e. Identification of any and all false statements, written or oral, or
24 false attestations made by the witness in connection with his duties as a law
25 enforcement officer.

26 f. Disclosure of any role the witness played in identifying,
27 recommending, locating or preparing newly designated “gang expert” Jonathan
28 Pultz.

1 g. Disclosure of any current or prior relationship, professional or
2 personal, between the witness and Pultz.

3 2. Regarding newly designated “gang expert” Jonathan Pultz:

4 a. Whether Pultz has knowledge of opinion(s) previously expressed
5 by Bauman or Flores in this case, including but not limited to those contained in
6 declarations, affidavits or sworn testimony in court or before the grand jury, and
7 how and when that knowledge was obtained (i.e. by reading writings or testimony,
8 by speaking with Bauman, Flores or others, by observing court proceedings etc.)

9 b. Designation of any and all of Bauman and Flores’ opinions
10 previously expressed in this case with which Pultz disagrees, the substance of any
11 disagreement, the reason(s) therefore, the date(s) any disagreement was
12 communicated to Bauman, Flores and/or government actors or agents, disclosure
13 of the identities of any and all government actors or agents to whom the
14 disagreement(s) was/were expressed, the dates of any such expression, whether it
15 was verbal or written and any notes, reports or writings of any government actor or
16 agent reflecting, in any manner, the substance of the communication.

17 c. Identification of any and all source(s) relied upon by Pultz to form
18 any opinion(s) related to any topic of his proposed expert testimony listed in the
19 expert disclosure letter dated August 27, 2012 and attached as Exhibit 1.

20 3. Regarding information in the possession of United States government
21 agents regarding crimes committed in El Salvador:

22 a. Any and all requests, written or oral, that have been made by any
23 member of a United States Agency¹ (“US Agency”) to any El Salvadoran Agency²

24
25 ¹ As used herein, the term “US Agency” refers to the FBI (including, but not
26 limited to the FBI office located in the US Embassy in El Salvador, the Los Angeles
27 Police Department and the Los Angeles Sheriff’s Department (both of whom have
28 conducted investigations in El Salvador in conjunction with the National Civilian
Police of El Salvador), the Transnational Anti-Gang Center and associated

1 (“ES Agency”) for investigative, prosecutorial or judicial documents, reports,
 2 transcripts or other information relating to the Miranda, Lacinios or Serrano
 3 killings.

4 b. Any and all investigative, prosecutorial or judicial documents,
 5 reports, transcripts or other information relating to the Miranda, Lacinios or Serrano
 6 killings provided by any ES Agency to any US Agency.

7 c. Any and all investigative, prosecutorial or judicial documents,
 8 reports, transcripts or other information in the possession of any US Agency
 9 relating to the credibility, or lack thereof, of Lacinios’ confessed killer, Juan
 10 Bonilla.

11 d. Any and all investigative, prosecutorial or judicial documents,
 12 reports, transcripts or other information in the possession of any US Agency
 13 relating to crimes committed by Lacinios’ confessed killer, Juan Bonilla both before
 14 and after his killing of Lacinios, including his escape from custody after being
 15 moved into the equivalent of witness protection.

16 e. Any and all investigative, prosecutorial or judicial documents,
 17 reports, transcripts or other information in the possession of any US Agency
 18 relating to any favors, deals, grants of immunity, promises of leniency or benefits
 19 or other inducements communicated to Lacinios’ confessed killer, Juan Bonilla.

20 4. Any and all investigation reports, witness statements, letters, prison kites,
 21 drawings, recordings or other materials, including documents in prison inmate files

23 Transnational Ant-Gang Unit (“TAG”) and Task Force (in which US law
 24 enforcement agencies participate), the MS-13 Hispanic Gang Task Force with the FBI,
 25 the Officer Exchange Program as well as United States Attorney’s Office.

26 ² As used herein, the term El Salvadoran Agency (“ES Agency”) refers to the
 27 law enforcement agencies in El Salvador including, but not limited to, the National
 28 Civilian Police, the Transnational Anti-Gang Center of the National Civilian Police
 Force as well as the prosecutorial offices, the courts and the prison bureaus.

1 and prison gang intelligence files, in the possession of the Federal Bureau of
2 Prisons (“FBOP”) regarding Walter Lacinos’ aka “Camaron” association with and
3 activities in support of the Mexican Mafia prison gang during his period of
4 incarceration from August 23, 1996 through his release in 2006.

5 5. Any and all information relating to a January 28, 2008 threat against Mr.
6 Sanchez, including the identity of the Los Angeles Task Metropolitan Task Force
7 on Violent Crimes (“LAMTFVC”) agents notified by Investigator Mike Prince of
8 the Aurora Police Department, all information, witness statements, reports and
9 other investigation conducted by Prince related to the threat, any and all
10 information regarding LAPD’s notification of Mr. Sanchez about the threat and
11 events related thereto, including the identity of the LAPD officers that contacted
12 Mr. Sanchez and any and all reports, memoranda or other documents related
13 thereto and any and all information related to follow up performed by LAMTFVC.

14 6. Regarding Government Cooperator from San Francisco:

15 a. The date of arrest of the individual reported by a government
16 cooperator to have been arrested in May 2006 in San Francisco for possession of
17 an AK-47 and any and all reports of law enforcement relating to the date and
18 circumstances of that individual’s arrest.

19 b. Any and all law enforcement reports regarding the cooperating
20 witness, his statements to any government actor or agent, disclosure of the history
21 and circumstances of his cooperation with the government, including any breaches
22 of his cooperation agreements and attempts to present false evidence to law
23 enforcement and any and all payments or other benefits provided to him by
24 government actors or agents.

25 7. In regards to intercepted call #765 from May 7, 2006, disclosure of:

26 a. Whether or not the government and/or its agents ever played the
27 audio file of the call to any cooperator or non-expert witness, including but not
28 limited to Juan Bonilla, the identity of the cooperator or non-expert witness, the

1 date(s) of any such playing of the audio file, the identity of any and all individuals
2 present and any and all statements, if any, of the cooperator or witness made
3 before, during or after the playing of the audio file;

4 b. Whether or not the government and/or its agents ever read or
5 displayed a transcript of the call, in any language, to any cooperator or non-expert
6 witness, including but not limited to Juan Bonilla, the identity of the cooperator or
7 non-expert witness, the date(s) of any such reading or display, the identity of any
8 and all individuals present and any and all statements, if any, of the cooperator or
9 witness made before, during or after the reading or display;

10 c. Whether or not the government and/or its agents ever discussed the
11 call with any cooperator or non-expert witness, including but not limited to Juan
12 Bonilla, the identity of the cooperator or non-expert witness, the date(s) of any
13 such discussion, the identity of any and all individuals present and any and all
14 statements, if any, of the cooperator or witness made before, during or after such
15 discussion;

16 d. Whether any cooperator or non-expert witness, upon hearing,
17 reading or discussing the call, identified any of the parties to the call, the identity
18 of the cooperator or non-expert witness making the identification(s), the date of the
19 identification(s), the identity of all individuals present, disclosure of the
20 identification(s) and the reason(s) therefore and disclosure of any other statements
21 made by the cooperator or non-expert witness in connection with the
22 identification(s);

23 e. Whether any cooperator or non-expert witness, having previously
24 made an identification(s) referenced in (d), supra, was confronted, in any manner,
25 with content from the call tending to identify the participants, the identity of the
26 cooperator or non-expert witness, the date of the confrontation, the identity of any
27 and all individuals present during any portion of the confrontation, and any and all
28 statements made before, during or after the confrontation by the cooperator or non-

1 expert witness.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The government has a duty to disclose to Mr. Sanchez any and all favorable evidence that could either: (i) be used at trial or (ii) that could be used “in obtaining further evidence.” *Giles v. Maryland*, 386 U.S. 66, 74 (1967). Favorable evidence need not be competent evidence or evidence admissible at trial; it is that evidence likely to lead to favorable evidence that would be admissible at trial. *United States v. Kennedy*, 890 F.2d 1056, 1059 (9th Cir. 1989); *United States v. Sudikoff*, 36 F. Supp 1196, 1200 (C.D. Cal. 1999). All of the information listed in (1) - (7), above, is “favorable evidence” that should be immediately produced.

II. ARGUMENT

A. The Government Violates Due Process When it Suppresses Evidence Favorable to a Defendant in a Criminal Proceeding

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that “the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.”

Society’s interest in a fair trial lies at the heart of the *Brady* doctrine itself. *See Kyles v. Whitley*, 514 U.S. 419, 509 (1995) (requiring the government to “disclose a favorable piece of evidencewill tend to preserve the criminal trial, as distinct from the prosecution’s private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.”) The United States Attorney is “the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done.” *Berger v. United States*, 295 U.S. 78 (1935).

The Supreme Court has emphasized that impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule. *United States v. Bagley*, 473

1 U.S. 667 (1985). In *Giglio v. United States*, 405 U.S. 150, 151 (1972), the
 2 Supreme Court found a *Brady* due process violation by the government's
 3 suppression of evidence of a leniency agreement with an accomplice-witness. Such
 4 evidence if disclosed and used effectively may make the difference between
 5 conviction and acquittal. See *Napue v. Illinois*, 360 U.S. 264 (1959) ("The jury's
 6 estimate of the truthfulness and reliability of a given witness may well be
 7 determinative of guilt or innocence, and it is upon such subtle factors as the
 8 possible interest of the witness in testifying falsely that a defendant's life or liberty
 9 may depend.").

10 In acknowledging that the prosecution has a duty to disclose any favorable
 11 evidence that could be used at trial, it is frequently overlooked that the prosecution
 12 also has a duty to disclose any favorable evidence that could be used "in obtaining
 13 further evidence." *Giles v. Maryland*, *supra*, 386 U.S. at 74. Favorable evidence
 14 need not be competent evidence or evidence admissible at trial; it is that evidence
 15 likely to lead to favorable evidence that would be admissible at trial. *United States*
 16 *v. Kennedy*, *supra*, 890 F.2d at 1059; *United States v. Sudikoff*, *supra*, 36 F. Supp
 17 at 1200.

18 If it is to competently discharge its duties under *Brady* and its progeny, the
 19 government must actively search its files and the files of its investigatory agencies
 20 reasonably expected to have such information. *Kyles v. Whitley*, *supra*, 514 U.S.
 21 419. Information is in the government's possession if the prosecutor has
 22 knowledge of and access to the documents sought by the defendant. *United States*
 23 *v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995). "Where doubt exists as to the
 24 usefulness of evidence [the government] should resolve such doubts in favor of full
 25 disclosure..." *United States v. Van Brandy*, 726 F.2d 548, 552 (9th Cir. 1983).

26 The Supreme Court has never precisely pinpointed the time at which
 27 disclosure under *Brady* must be made. It is abundantly clear, however, that
 28 disclosure by the government "...must be made at such a time as to allow the

1 defense to use favorable material effectively in the preparation and presentation of
 2 its case, even if satisfaction of this criteria requires pre-trial disclosure.” *United*
 3 *States v. Pollock*, 5324 F. 2d 964, 973 (D.C. 1975). Accord *United States v.*
 4 *Starusko*, 759 F.2d 256 (3rd Cir. 1984); *United States v. Higgs*, 713 F.2d 39 (3rd Cir.
 5 1983). A more lenient disclosure burden on the government would drain *Brady* of
 6 all vitality. *United States v. Elmore*, 423 F.2d 775, 779 (4th Cir. 1970). The Ninth
 7 Circuit has clearly pronounced that “under *Brady*, the government must disclose
 8 *before* trial ‘evidence [that is] material either to guilt or punishment which is
 9 favorable to the accused...” *United States v. Nagra*, 147 F.3d 875, 881 (9th Cir.
 10 1998) (quoting *United States v. Hanna*, 55 F.3d 1456, 1459 (9th Cir. 1995)).

11 Furthermore, widely recognized standards of professional conduct require a
 12 prosecutor to disclose “at the earliest feasible opportunity” the existence of all
 13 evidence which tends to negate the guilt of the accused or mitigate the offense
 14 charged or which would tend to reduce the punishment of the accused. ABA
 15 Standards for Criminal Justice: Prosecution and Defense Function 3d. Edition 1993
 16 § 3-3.11.

17 **B. In the Pre-Trial Context, the Government Is Required to Disclose**
 18 **Information that is Likely to Result in Admissible Evidence Favorable**
 19 **to the Accused**

20 *Brady* and its progeny arose in a post-trial context. Specifically these cases
 21 addressed, after trial, whether the failure to disclose favorable material evidence in
 22 violation of a defendant’s due process rights justified a new trial. In that context,
 23 only suppression of evidence that cumulatively rises to the level of “material”
 24 violates defendant’s due process rights. *United States v. Bagley, supra*, 473 U.S.
 25 667.

26 *Brady’s* concern whether a constitutional violation occurred after trial is a
 27 different question than the scope of a prosecutor’s duty to disclose evidence pre-
 28 trial. In *Strickler v. Greene*, 527 U.S. 263, 281 (1999) the Supreme Court

1 recognized that the duty to disclose is broader than the question of whether failure
 2 to disclose violates the Constitution. In the context of pretrial disclosures, the
 3 government is “...obligated to disclose all evidence relating to guilt or punishment
 4 which might reasonably be considered favorable to defendant’s case.” *United*
 5 *States v. Sudikoff, supra*, 36 F. Supp at 1199-1200.

6 “Favorable” evidence is that which relates to guilt or punishment and which
 7 tends to help the defense by either bolstering the defense’s case or impeaching
 8 prosecution witnesses. *Id.* (citations omitted). “Evidence” is material that is either
 9 admissible or likely to lead to admissible evidence. *Id.*

10 **C. The Information Sought by Mr. Sanchez is in the Possession of the**
 11 **Government and/or its Agents, Would be Favorable to Mr. Sanchez and**
 12 **is Therefore Subject to Immediate Disclosure**

13 The list of materials requested by Mr. Sanchez has been tailored to include
 14 only information that might reasonably be considered favorable to his case.

15 **1. Information Regarding Government’s Witnesses Bauman,**
 16 **Flores and Pultz**

17 The government and its witnesses FBI Agent Bauman and LAPD Det.
 18 Flores, made critical errors in investigating, interpreting and presenting the
 19 evidence about the alleged Lacinos murder conspiracy to the Court and the grand
 20 jury. Jacks Decl. ¶¶ 4-7 and Sanchez Motion to Dismiss the Indictment, filed
 21 concurrently herewith. The calls themselves, Mr. Sanchez’s filings prior to the
 22 detention hearing, the cross-examination of Flores at the October 2009 detention
 23 hearing and the August 2010 deposition of Treminio Hernandez have established
 24 the falsity of the government’s evidence regarding the Lacinos murder conspiracy.
 25 The government has refused to own up to the extent it has relied upon and
 26 presented false evidence in these proceedings. Without any explanation, the
 27 government scrapped its “gang expert” Flores, stated its intent to go forth with no
 28 law enforcement gang expert and then changed course and replaced Flores with a

1 seemingly “sanitized” expert, Pultz. Jacks Decl. ¶¶ 8-11.

2 If Bauman and/or Flores provided false testimony and submitted court
3 documents containing false attestations, then these facts are highly relevant to their
4 credibility. Even if neither individual was going to be a government witness at
5 trial, the presentation of false testimony and false attestations, in connection with
6 any case or any law enforcement duty, are relevant to the integrity of this
7 investigation, the grand jury proceedings and the indictment.

8 If Bauman and/or Flores has experienced a change in any “opinion”
9 expressed in any declaration, affidavit or sworn testimony, that too, is highly
10 relevant to their credibility and the integrity of the investigation, the grand jury
11 proceedings and the indictment. Disclosure of the identity of any government
12 actor or agent to whom any change of “opinion” was communicated and the
13 content and circumstances of that communication is likely to lead to admissible
14 evidence about the substance and impact of the changed “opinion,” the timing and
15 circumstances of any failure to disclose and the witnesses thereto.

16 If a new expert considered and rejected the Bauman’s and Flores’ opinions,
17 the specifics of that analysis, and the individuals to whom it was communicated, is
18 relevant to the credibility of Bauman and Flores, the determination as to whether
19 and to what extent false evidence was presented to the grand jury, the integrity and
20 reliability of the proffered gang expert testimony, in general, and the credibility of
21 the new expert. If the new expert never consulted Bauman or Flores or gave any
22 consideration to Bauman’s or Flores’ expert testimony on the same topics about
23 which he was supposed to opine at trial, then those facts contribute directly to his
24 credibility or lack thereof.

25 The law does not permit the government to put its head in the sand and act as
26 if Bauman and Flores have not testified falsely in this case. Pursuant to *Brady* and
27 its progeny, the government has a duty to seek the truth about their reliance on and
28 presentation of false evidence and to **fully** inform the Court and the defense of all

1 of the relevant facts related thereto.

2 **2. Reports and Other Evidence Regarding Crimes Committed in**
3 **El Salvador and the Credibility of Informant Juan Bonilla**

4 Defense investigation has revealed that criminal investigations into the
5 murder of Lacinos and several related crimes were conducted in El Salvador.
6 Those investigations, as described by a law enforcement officer personally
7 involved in them, produced information that contradicts the government's evidence
8 about the conspiracy to murder Lacinos charged in this case. Jacks Decl. ¶¶ 12-14.
9 According to his same law enforcement official, the El Salvador investigation
10 revealed Bonilla to be a prolific criminal and cunning liar who worked his way into
11 a favorable custodial situation, from which he ultimately escaped. Jacks Decl. ¶
12 18. If the evidence generated during the El Salvador investigation is correct,
13 Lacinos' murder had nothing to do with Mr. Sanchez or any calls from Los
14 Angeles and there is copious evidence regarding informant Bonilla's lack of
15 credibility. The materials sought regarding the murder investigations and the
16 credibility of Bonilla undermine the government's case and are clearly favorable to
17 Mr. Sanchez.

18 The government has repeatedly asserted that its agents in El Salvador did not
19 participate in the investigation of the Lacinos' and related murders and that its
20 agents in El Salvador do not have possession of requested investigative,
21 prosecutorial or judicial materials regarding the Lacinos' murder, related murders
22 or Bonilla. Jacks Decl. ¶ 17. While normally, the government's representation that
23 it has conducted a search of its files and those of its agents and discovered no
24 *Brady* evidence would be sufficient, reliance on those representations in this case
25 seems particularly unwise. Not only have law enforcement officials in El Salvador
26 contradicted the government's assertions about its access to the materials, a
27 document disclosed in discovery is, in fact, a cover letter from an El Salvadoran
28 police agency transmitting investigative materials to FBI agents in El Salvador.

1 Jacks Decl. ¶¶ 14-15. The referenced enclosures have not been disclosed to the
2 defendants in this case. Jacks Decl. ¶ 15. And, on its website, the FBI publicly
3 touts its collaboration with El Salvadoran law enforcement in investigating gang
4 crimes. Jacks Decl. ¶ 16. These facts, coupled with the government's failure to
5 honor its *Brady* obligations in other respects, demonstrated repeatedly by the
6 record in this case, suggest that the government should be closely monitored and
7 compelled to assert additional diligence to obtain the *Brady* materials regarding the
8 El Salvador crimes and informant Bonilla.

9 **3. FBOP Documents Establishing Lacinos' Association with the**
10 **Mexican Mafia**

11 Lacinos reportedly killed Miranda with the approval of the Mexican Mafia
12 and was then killed a few days later in retaliation. Jacks Decl. ¶ 19. Documents in
13 discovery show Lacinos was classified by the FBOP as an associate of the Mexican
14 Mafia security threat group and engaged in acts of violent behavior in prison at the
15 behest of that group. Jacks Decl. ¶ 20(a). The FBOP at ADX operates a gang
16 intelligence unit and maintains files and records on individuals with gang
17 affiliations. Jacks Decl. ¶ 20(b). The FBOP also maintains files on inmates
18 containing information relevant to gang membership, activities and relationships.
19 Jacks Decl. ¶ 20(c). Information establishing Lacinos' connection with the
20 Mexican Mafia, his activities in accordance with their dictates, identification of
21 those Mexican Mafia members or associates with whom he communicated and the
22 content of any communications is favorable to Mr. Sanchez and may lead to
23 admissible evidence that corroborates the report from El Salvadorean law
24 enforcement that Lacinos was killed in retaliation for his Mexican Mafia
25 authorized murder of Miranda.

26 To date, the government has exhibited cavalier gamesmanship in responding
27 to Mr. Sanchez's prior requests for this important information: the government
28 claimed that the information was not in its possession and suggested Mr. Sanchez

1 subpoena it directly from the FBOP; then, when Mr. Sanchez served the suggested
2 subpoena, the government moved to quash it. Jacks Decl ¶ 20(d).

3 A criminal trial is supposed to be a search for the truth, not a game. The
4 requested information is in the possession of government agents at the FBOP, it is
5 favorable to Mr. Sanchez and the government should be required to immediately
6 produce the relevant materials from those files, without any further obfuscation.

7 **4. Investigative Reports and Files from January 2008 Threat**
8 **Against Mr. Sanchez's Life**

9 The government does not deny that threats were made against Mr. Sanchez's
10 life or that the police investigated the events and prepared reports about the
11 underlying investigation. Nor does the government deny it is in possession of
12 these reports and information. Instead the government simply refuses to turn over
13 the information claiming the defense is not entitled to it or that it has provided the
14 defense enough information. Jacks Decl. ¶¶ 21-22.

15 The government is wrong. The defense is entitled to exculpatory evidence
16 which both supports his defense and undermines the government's contentions.
17 The fact threats were made against Mr. Sanchez's life by member(s) of the MS-13
18 undermines the government's contention that Mr. Sanchez was an active member
19 and a shot caller of the gang. Moreover, the law does not carve out exceptions to
20 *Brady*, permitting the government to provide some of the favorable in its
21 possession (the audio calls, which have been disclosed), but to withhold the rest
22 (the relevant reports of law enforcement). Indeed, where the government or its
23 agents are in possession of the evidence – such as police reports – as it is here, the
24 evidence must be turned over to the defense.

25 The fact that a member(s) of MS-13 believed Mr. Sanchez's work as a gang
26 interventionist threatened the gang undermines the government's contentions. If
27 Mr. Sanchez's activities with Homies Unidos were merely a front, as the
28 government's expert has claimed, MS-13 members would not have sought to kill

1 him. Indeed, the documents and the information contained in them buttress and
2 corroborate Mr. Sanchez's contention that his activities as a gang interventionist
3 put him at risk of assassination by those who perceived his work with Homies
4 Unidos to be a problem and/or believed him to be a "snitch."

5 **5. Regarding Government Cooperator from San Francisco**

6 According to a report produced in discovery, the government has a
7 cooperating witness, who has previously testified for the government in a related
8 proceeding, who claims Mr. Sanchez was in San Francisco in May 2006
9 conducting gang business. Jacks Decl. ¶25. This same report states that the
10 cooperating witness was "certain" of the exact day in May 2006, because an
11 associate of his was arrested in San Francisco with an AK-47. Jacks Decl. ¶25.

12 The date of the associate's arrest and the relevant law enforcement reports
13 identifying the witnesses thereto are omitted from discovery. Repeated requests to
14 the government for the date and reports of the associate's arrest have gone
15 unanswered. Jacks Decl. ¶ 25. The government should be required to immediately
16 disclose this favorable information because it is likely to lead to additional
17 favorable evidence. Mr. Sanchez cannot investigate or prepare to present evidence
18 that he was not in San Francisco on the date the cooperator claims unless he knows
19 the date he is alleged to have been there. Additionally, Mr. Sanchez cannot verify
20 the arrest or circumstances thereof of the cooperator's associate unless he is
21 provided with the relevant law enforcement reports.

22 The status of the government's disclosures regarding the San Francisco
23 cooperator are also inadequate because the government has only disclosed one
24 report of this informant's statements to law enforcement in September and October
25 2009. Jacks Decl. ¶ 23. The witness has been a government cooperator since
26 February 2006, testified in prior proceedings, was paid for his cooperation at times,
27 has committed crimes in violation of his cooperation agreement(s) and has
28 attempted to induce others to lie to federal agents for his benefit. Jacks Decl. ¶ 24.

1 All of this information is favorable to Mr. Sanchez because it can be used to
 2 impeach the credibility of this informant. It should be immediately disclosed.

3 **6. Regarding Intercepted Call #765 May 7, 2006**

4 The government has claimed that this is the call during which Mr. Sanchez
 5 spoke directly with Bonilla and ordered him to kill Lacinos. Jacks Decl. ¶ 26. As
 6 discussed fully in the Motion to Dismiss, the government's allegations about this
 7 call are false.

8 The government has never disclosed whether its actors or agents played,
 9 read or otherwise communicated the information in the call to Bonilla or any other
 10 potential witness. Jacks Decl. ¶ 27. Such efforts would seem obviously relevant to
 11 any genuine effort made by the government or its agents to identify the participants
 12 in the call. Nor has the government disclosed any response from any such witness.
 13 Jacks Decl. ¶ 27. Any response is favorable to Mr. Sanchez: either it will be
 14 truthful and corroborate that Treminio Hernandez, not Bonilla, participated in the
 15 call, or it will be untruthful and relevant to the witness' lack of credibility.
 16 Furthermore, government efforts to confront any person who has identified parties
 17 to the call with details about the call would produce additional favorable evidence
 18 of the witness' credibility or lack thereof, whatever his/her response.

19 **III. CONCLUSION**

20 For the reasons stated herein, the Court should grant Mr. Sanchez's Motion
 21 to Compel in its entirety.

22 DATED: November 19, 2012

23 Respectfully submitted,

24 /s/

25 AMY E. JACKS
 26 Attorney for Defendant
 27 ALEX SANCHEZ
 28

CERTIFICATE OF SERVICE

I, Amy E. Jacks hereby declare:

That I am employed in the County of Los Angeles, State of California; that my business address is 315 E. 8th St. #801, Los Angeles, CA 90014; that I am over the age of eighteen and not a party to the within entitled action; that I am a member of the bar of this Court.

On November 19, 2012, I served a copy of:

DEFENDANT ALEX SANCHEZ'S NOTICE OF MOTION AND
MOTION TO COMPEL IMMEDIATE DISCLOSURE OF FAVORABLE
EVIDENCE; DECLARATION OF COUNSEL; EXHIBITS

Service was:

- ☐ Placed in a sealed envelope and mailed via United States Mail, addressed as follows:
☐ By hand delivery addressed as follows:
☐ By facsimile as follows:
☐ By messenger as follows:
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and all defense attorneys

This Certificate is executed on November 19, 2012 at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Amy E. Jacks
AMY E. JACKS
Attorney at Law